

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PIERRE BRAILSFORD, individually and on behalf of all others similarly situated.) Case No. C 06-00700 CW
Plaintiffs,)
vs.) **CLASS ACTION**
JACKSON HEWITT INC.; TAX SERVICES OF AMERICA, INC.,) **ORDER PRELIMINARILY APPROVING**
Defendants.) **STIPULATION OF CLASS ACTION**
) **SETTLEMENT**
) **Judge: Hon. Claudia Wilken**
)

1 The Court, having reviewed the Stipulation of Class Action Settlement (“Settlement
2 Agreement”) submitted by the parties and considered the matter, hereby ORDERS that the
3 Settlement Agreement is preliminarily approved. The Court further finds that:

4 1. The members of the Class (defined below) are so numerous that joinder of all
5 members is impracticable;

6 2. There are questions of law and/or fact common to the Class;

7 3. The claims of Pierre Brailsford (the “Representative Plaintiff”) are typical of
8 the claims of the Class;

9 4. The Representative Plaintiff will fairly and adequately protect the interests of
10 the Class;

11 5. The questions of law and/or fact common to the members of the Class
12 predominate over any questions affecting only individual members;

13 6. A class action is superior to other available methods for the fair and efficient
14 adjudication of this controversy; and

15 7. The proposed settlement resulted from arms length negotiations by qualified
16 and competent counsel, assisted by a qualified and competent mediator.

17 It is, therefore, hereby ORDERED that:

18 8. Pursuant to Federal Rule of Civil Procedure 23(b)(3), the Class defined below
19 is provisionally certified, and is treated as a class for settlement purposes.

20 9. The Class is defined as all customers who obtained a Refund Anticipation Loan
21 (“RAL”) in California that was facilitated by Jackson Hewitt from a national bank between
22 December 23, 2001 and December 23, 2005. The Class does not include the following
23 otherwise falling within the above definition: (i) anyone who is an officer, director, or
24 employee of Jackson Hewitt or any of its franchisees; and (ii) anyone who applied for and
25 obtained a refund anticipation loan outside the class period or outside of California.

26 10. The Court determines that Pierre Brailsford is an adequate class representative
27 and, certifies that Pierre Brailsford is the Representative of the Class.

1 11. Pursuant to Rule 23(g), the Court certifies Mark A. Chavez, of Chavez &
2 Gertler LLP; John Roddy of Roddy Klein and Ryan; Ronald L. Frederick of Ronald Frederick
3 & Associates, Co. L.P.A.; and Brian A. Glasser and John W. Barrett of Bailey & Glasser LLP
4 as adequate Class Counsel, with authority to take all appropriate actions in connection with
5 the review, approval implementation and administration of the Settlement.

6 12. The proposed settlement as set forth in the Settlement Agreement executed by
7 the parties is preliminarily approved as fair, reasonable and adequate, subject to a hearing as
8 provided herein for final approval.

9 13. The Representative Plaintiff and all members of the Class are barred and
10 enjoined from bringing or continuing to prosecute any claim, action or cause of action against
11 any of the Defendants relating to the matters that will be released under the Settlement
12 Agreement, unless he or she opts out of the Class pursuant to the procedures set forth below.

13 14. The parties shall select a Claims Administrator. Defendants shall use best
14 efforts to provide the Claims Administrator with the names and current or last known mailing
15 addresses of all Class members within 30 days of entry of this Order.

16 15. A hearing (“Final Approval Hearing”) is hereby set for **April 27, 2007 at**
17 **10:00 a.m.**, in Courtroom 2 at the United States Courthouse, 1301 Clay Street, Oakland,
18 California, to determine whether the proposed settlement is fair, reasonable and adequate, and
19 should be finally approved, and to consider an award of reasonable attorneys’ fees and
20 expenses and award to the Representative Plaintiff. All memoranda, affidavits, declarations
21 and other evidence in support of the request for approval of the Settlement and Class
22 Counsel’s request for approval of attorneys’ fees, costs and reimbursement of expenses shall
23 be filed no later than seven (7) calendar days prior to the Final Approval Hearing.

24 16. The Settlement Administrator shall send notice (“Mailed Notice”) to class
25 members by first class mail, postage prepaid. Mailed Notice of the Settlement Agreement
26 shall be sent in the same mailing envelope as the notice of settlement reached between the
27 California Attorney General and Jackson Hewitt, and entered by Stipulated Judgment in the
28 Superior Court of Alameda County, California. A copy of the Mailed Notice to be sent in this

1 case is attached to the Settlement Agreement at Exhibit 2. The Court finds that Mailed Notice
2 is the best practicable method of notice that is reasonably calculated to apprise Class members
3 of the Settlement Agreement and their rights.

4 17. Class members whose original Mailed Notice has been returned and, as a result,
5 for whom an additional locator service will have been used to prepare and send, if possible, a
6 second Mailed Notice, shall have the later of thirty (30) calendar days after the date of the
7 mailing of the second Mailed Notice or ninety (90) days after the initial Mailed Notice, to opt-
8 out of the Class.

9 18. Each Class Member who wishes to exclude himself/herself from the Class must
10 submit an appropriate written request for exclusion, including his/her name, address and
11 telephone number, with the Clerk of the Court, in care of the post-office box rented for that
12 purpose not later than 20 days before the Fairness Hearing. No Class Member, or any person
13 acting on behalf of or in concert or participation with that Class Member, may exclude any
14 other Class Member from the Class. The original requests for exclusion shall be filed with
15 the Court by Plaintiffs' Counsel at or before the Fairness Hearing. If the proposed settlement
16 is approved, any and all Class Members who have not submitted a timely, written request for
17 exclusion from the Class shall be bound by all proceedings, orders and judgments in this
18 action.

19 19. Any Class Member who has not filed a timely written request for exclusion and
20 who wishes to object to the fairness, reasonableness or adequacy of the Settlement
21 Agreement, or to the award of Attorneys' Fees and Expenses, must deliver to Plaintiffs'
22 Counsel and Defendants' Counsel and file with the Court, no later than 20 days before the
23 Fairness Hearing or as the Court may otherwise direct, a statement of his/her objection, as
24 well as each and every specific reason(s), if any, for each objection, including all legal
25 support the Class Member wishes to bring to the Court's attention and any evidence the Class
26 Member wishes to introduce in support of the objection. Class Members may so object either
27 on their own or through an attorney hired at their own expense.

28

1 20. If a Class Member hires an attorney to represent him/her, the attorney must (i)
2 file a notice of appearance with the Clerk of Court no later than 20 days before the Fairness
3 Hearing, or as the Court may otherwise direct, and (ii) deliver to Plaintiffs' Counsel and
4 Defendants' Counsel not later than 20 days before the Fairness Hearing a copy of the same.

5 21. This Order shall not be construed or deemed to be a finding of this Court or
6 evidence of a presumption, implication, concession or admission by Defendants concerning
7 (i) any liability, fault or wrongdoing by Defendants; (ii) the appropriateness of any measure of
8 alleged loss or damages; or (iii) the appropriateness of class certification for any purposes
9 other than settlement. If the Settlement Agreement is terminated pursuant to its terms, or if
10 the Settlement is not approved or consummated for any reason whatsoever, the Settlement and
11 all proceedings had in connection therewith shall be without prejudice to the *status quo ante*
12 rights of the parties to this action. In that event, upon notice of one or more Parties of the
13 termination or failure to consummate the Settlement, this Order shall be vacated, the
14 certification shall be dissolved *ab initio*, and all of the *status quo ante* rights of the Parties
15 shall be restored including, but not limited to, Defendants' rights to oppose certification of a
16 class and/or the merits of Plaintiffs' claims on any grounds, legal or equitable.

17 IT IS SO ORDERED.

18
19 DATED: January 12, 2007

20 
21

22 The Honorable Claudia Wilken
23 UNITED STATES DISTRICT COURT JUDGE
24
25
26
27
28